

The opinion in support of the decision being entered today is *not* binding
precedent of the Board.

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE BOARD OF PATENT APPEALS
AND INTERFERENCES

Ex parte LUDMILA CHERKASOVA

Appeal 2007-1339
Application 10/619,805
Technology Center 2100

Decided: September 21, 2007

Before ANITA PELLMAN GROSS, HOWARD B. BLANKENSHIP,
and ST. JOHN COURTENAY, III, *Administrative Patent Judges*.

BLANKENSHIP, *Administrative Patent Judge*.

DECISION ON APPEAL

This appeal involves claims 1-34, the only claims pending in this
application. We have jurisdiction under 35 U.S.C. §§ 6(b), 134(a).

INTRODUCTION

The claims are directed to systems and methods for efficiently distributing a file from a first node to a plurality of recipient nodes.

(Abstract.) Claim 1 is illustrative:

1. A method comprising:

partitioning a file into a plurality of subfiles;

distributing the plurality of subfiles from a first node to a first group comprising a plurality of recipient nodes, wherein at least one subfile is distributed from the first node to each recipient node of said first group but no individual recipient node receives all of said plurality of subfiles; and

exchanging subfiles among said plurality of recipient nodes of said first group such that each recipient node of said first group obtains all of said plurality of subfiles, wherein at least one recipient node of said first group begins communicating a portion of its respective subfile that it is receiving from the first node to at least one other recipient node of said first group before the at least one recipient node fully receives its respective subfile.

The Examiner relies on the following prior art references to show unpatentability:

Bushmitch	US 5,928,331	July 27, 1999
Zayas	US 6,477,583 B1	Nov. 5, 2002
Chung	US 2004/0088380 A1	May 6, 2004

Blanton, *Microsoft Computer Dictionary*, Microsoft Press, Fifth Ed. pp. 397, 499, 2002.

The rejections as presented by the Examiner are as follows:

1. Claims 1, 3-17, 19-22, 25, 26, and 28-31 are rejected under 35 U.S.C § 103(a) as unpatentable over Chung and Zayas.

2. Claims 2, 18, 23, 24, 27, and 32-34 are rejected under 35 U.S.C. § 103(a) as unpatentable over Chung, Zayas, and Bushmitch.

An earlier rejection of claim 4 under 35 U.S.C. § 112, second paragraph has been expressly withdrawn by the Examiner. (Answer 3.)

OPINION

The allocation of burdens requires that the USPTO produce the factual basis for its rejection of an application under 35 U.S.C. §§ 102 and 103. *In re Piasecki*, 745 F.2d 1468, 1472, 223 USPQ 785, 788 (Fed. Cir. 1984) (citing *In re Warner*, 379 F.2d 1011, 1016, 154 USPQ 173, 177 (CCPA 1967)). The one who bears the initial burden of presenting a prima facie case of unpatentability is the Examiner. *In re Oetiker*, 977 F.2d 1443, 1445, 24 USPQ2d 1443, 1444 (Fed. Cir. 1992).

The Examiner offers the teachings of Chung and Zayas in a rejection of claim 1 under 35 U.S.C. § 103(a). (Answer 3-5.) Appellant contests, *inter alia*, the Examiner's finding (Answer 4) that Chung teaches, in paragraph 16, wherein at least one recipient node of the first group begins communicating a portion of its respective subfile that it is receiving from the first node to at least one other recipient node of the first group before the at least one recipient node fully receives its respective subfile.

Chung discloses, at ¶ 16 (emphasis added):

One aspect of the invention involves dividing a single file into multiple files or sub-files. A sub-file has a file name and other file attributes, and is treated by the operating system's file system as just another file. The divided files or sub-files may then be distributed and stored onto one or more servers. *When an end user wants the file to be delivered in a streaming*

fashion, the sub-files can be transmitted in parallel and simultaneously from one or more servers, which increases the rate at which data can be delivered.

The Examiner further notes that Chung teaches (§ 21) that the invention may be practiced on a peer-to-peer network, such that the end user may be construed as a server. (Answer 20-21.) However, we agree with Appellant (Reply Br. 7-8) that file delivery in a streaming fashion, in parallel and simultaneously from one or more sources, whether on a client-server or a peer-to-peer network, fails to teach the claim 1 language in controversy. We find nothing in Chung to teach or suggest that a recipient node begins communicating a portion of its respective subfile that it is receiving from another node before the recipient node fully receives the subfile.

We acknowledge that “streaming” of data may be defined as transmitting data in real time and delivering information in a steady flow that the recipient can access as the file is being transmitted. (Answer 21.) *See also* Blanton 499. However, it does not follow from streaming of data, in parallel and simultaneously from one or more sources, that any file or subfile is simultaneously received and transmitted. Rather, Chung’s teaching appears to be there can be a seamless reception of data even when different portions of the data are provided from different sources on the network.

Nor do we find the asserted teaching to be contained in paragraph 17 of Chung, nor in Zayas column 3, lines 35 through 39, which describes replication of file volumes on a different set of file servers, nor in multiple users requesting data (presumably on a peer-to-peer network), nor in

accessing (requesting) a file as it is being transmitted, all of which the Examiner seems to rely on at pages 21 and 22 of the Answer.

We agree with Appellant that the evidence offered in the rejection of claim 1 fails to provide adequate support for the Examiner's findings with respect to that evidence. As a consequence, the rejection does not account for all the limitations of instant claim 1 that must be considered in a showing of prima facie obviousness of the subject matter as a whole. We do not sustain the rejection of claim 1. Because each of the remaining independent claims (17, 23, 25, and 32) contains the same or substantially similar limitations to those of claim 1 for which the rejection falls short, and Bushmitch does not remedy the deficiencies, we cannot sustain the rejection of any claim on appeal.

CONCLUSION

The rejection of claims 1, 3-17, 19-22, 25, 26, and 28-31 under 35 U.S.C § 103(a) as unpatentable over Chung and Zayas is reversed. The rejection of claims 2, 18, 23, 24, 27, and 32-34 under 35 U.S.C § 103(a) as unpatentable over Chung, Zayas, and Bushmitch is reversed.

REVERSED

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HEWLETT PACKARD COMPANY
P. O. BOX 272400, 3404 E. HARMONY ROAD
INTELLECTUAL PROPERTY ADMINISTRATION
FORT COLLINS, CO 80527-2400